



Ambassador Jeffrey L. Bleich – New York State Bar Association

Remarks of Ambassador Bleich to the New York State Bar Association, Sydney

(As prepared for delivery – October 29, 2010)

Thank you for that kind introduction Steve, and thank you to the New York State Bar Association for inviting me here to speak with you, today.

As Steve mentioned, I am a recovering lawyer myself. I'm sure you've had the same experience that while we are proud of our work as lawyers, other people tend to be a little less charitable. In fact, I didn't know I could fall lower in the public opinion food chain, until I became a diplomat. But someone showed me a quote from one of our Founding Fathers, John Adams, who said that: "After a lifetime of experience, I've concluded that one useless man is a waste; two is a law firm; and three or more is a diplomatic corp." [Laughter] So there you go.

I also want to compliment you on your choice of venue. As Steve told you, I used to be the President of the California State Bar, and there's a bit of a rivalry between the New York and Cal Bars. But today proves to me that, you win, New York Bar leaders are smarter. You have your meetings in Sydney, and Singapore, and Stockholm, and Sao Paulo. I had my annual meeting in Anaheim. [Laughter]

One advantage of having your meeting outside of the country is that it does give you an opportunity to learn about different customs. While many things about bar functions in the U.S. and Australia are very similar, there are some differences. For example, in the U.S., if someone is receiving an award, it is fairly common for them to get a standing ovation, regardless of what they say. But here in Australia, there are virtually no standing ovations. In fact, recently I attended an event where I received a standing ovation and I was kind of overwhelmed. Until I discovered that the people in the room didn't actually believe I was the American Ambassador. [Laughter] They thought I was a performance artist and was merely pretending to be the U.S. Ambassador. [Laughter] Several congratulated me on concealing my Italian accent. [Laughter]

Anyway, I know that I'm back among my friends in the American legal community today. In my current role, when I enter a room of State Department personnel, as a matter of protocol, they all stand up. But here among my legal colleagues, they do what they always did and pull out their BlackBerrys. [Laughter]



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Today, I hope to say something that will at least rival your emails for your attention. Instead of offering the usual homilies about the nobility of our profession, or the greatness of the Rule of Law, that you expect your Ambassador to offer, I'd like to surprise you by doing something Ambassadors aren't supposed to do, which is say something interesting. [Laughter] So I'd like to talk about something that is actually on your minds these days – namely U.S. elections.

Having your Bar Association conference outside the United States a few days before the mid-term elections, not only spares you having to endure all of the election ads, but it also gives you an opportunity to learn about other systems of law and government and how they address their elections. Justice Louis Brandies referred to the individual states as laboratories of experiment. The truth is that other democracies can also serve as laboratories and sometimes offer useful perspectives on common issues.

So today I'd like to talk about voting. The United States pioneered democracy and the concept that citizens should have the right to vote to choose their electors. Our Founders fought and died and risked their fortunes for that principle. But our system has not always been perfect. Until the 1860s, African-Americans could not vote and in fact they did not even count as a full person for determining population. It wasn't until after the turn of the last century, that women could vote. And since then, even when the right to vote existed in law, we have had periods of Jim Crow laws, voter challenges, and various other tactics that effectively disenfranchised voters.

One example that you may not know is that for much of our history, individuals had to openly declare who they were voting for with their ballot read out loud. Not surprisingly, voters were often bullied at the ballot box or in the horse stable by corrupt political party machines.

In fact, it was not until the late 19th century that the U.S. imported what was then called the "Australian ballot," or secret ballot. It is still one of the most significant democratic advances in American electoral history. But despite that useful contribution, the U.S. has not looked to Australia recently for any other electoral practices that might help shore up the integrity of America's election system.

Today, while the United States has one of the most effective voting systems, it is still not perfect. As the Bush v. Gore election demonstrated, a lot of ballots are cast that are not counted because of technical problems, meaning that many people who want to vote are effectively disenfranchised. Moreover, a good number of people simply don't vote at all. Only a fraction of eligible voters actually vote. As a result special interests and political parties understand that they can affect elections simply by focusing on single issues that will motivate some people to vote or discourage others.



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And now, after the Citizens United decision, there are relatively few limits on how much money can be spent by those special interests – operating through corporate forms – to drive election results. This decision means that, as a matter of constitutional law, Congress has relatively few means to prevent money from distorting election results.

So today, with elections this week marking the 10 year anniversary of the Bush v. Gore election, I'd like to talk about five aspects of the system here in Australia to improve election integrity that differ from our own. While I am not endorsing them, I think that they that are at least worth considering as ways to ensure greater voter participation, greater integrity in vote counts, and some assurance that elections reflect the will of all the people.

First, the most controversial idea. In Australia voting is compulsory for all registered voters. This isn't unique in the world. You see this in Argentina and many other countries. While Australia's compulsory voting system is unlikely to catch on in the U.S. any time soon (I saw your eyes rolling when I mentioned it), it is worth considering what voluntary voting says about our attitude toward public elections.

As lawyers we all understand that appearing for jury duty – even if you can't serve – is a responsibility of being a citizen. If you are summoned and you don't show up, you can be fined. So what is the difference with voting. As an owner of this country, each of us has a duty to express our opinion about our leaders. It isn't a right of citizenship; it is a duty. Even if you decide to vote for no one or the Naked Cowboy, you are at least expressing your opinion. In practice, this approach has not lead to crazy results with write-in candidates getting elected. There is no evidence that it restricts the liberties of Australians.

What it does is change how money is spent in elections and how lawmakers campaign. Lawmakers here are less likely to focus on narrow single issue voters, or trying to slice and dice individual states to figure out which demographics need to be encouraged to vote, because everyone can vote. As a result, there is no need to spend money on get-out-the-vote efforts or motivating particular groups. Rather, they are more inclined to consider the total electorate in policy making and implementation, and candidates might focus more on longer-term priority issues rather than single issue matters designed simply to get "their" people to the polls.

If nothing else, this could help reduce the influence of money in our campaigns without running afoul of the Constitution. These days in American elections, most money is spent on likely voters, targeting them and trying to get them excited. But if everyone, or at least nearly everyone votes, the micro-targeting becomes less relevant. Politicians would be forced to offer policies and solutions that would appeal to the wider electorate, not just retirees, or soccer moms, or NASCAR dads.



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The second innovation goes to the integrity of election results. There is probably no perfect voting system; and the issue is how do you resolve disputes about vote counts. In the U.S. this is typically done by the Secretary of State, who is herself an elected or appointed official and in virtually all states runs as a member of one of the political parties involved in the election contest.

Here in Australia the federal and state systems have a Non-partisan Election Administration. In Australia and most other advanced democracies, election administration is handled by a neutral, non-partisan national election commission. In contrast to a system where the administrators have ties to candidates and their parties, the Australian model ensures that the people who run elections do not have a stake in their outcome. According to public opinion polls, Americans overwhelmingly support non-partisan election administration. The value of looking at the Australia model is that it can help us evaluate whether this system is better at ensuring that our elections are conducted fairly for all voters, candidates and parties involved.

The third innovation concerns how we register voters. When I was doing voter protection in the States, I recall being at a voting booth in San Antonio, Texas where people were waiting four hours in the hot sun to vote. And when they would get to the front of the line, many times they were told that according to the voter registers, they weren't eligible to vote.

In Australia, the system is designed so that every eligible adult can vote. And by and large they generally do. To insure that those who are eligible to vote are actually able to vote, the Government has placed responsibility for voter registration with the state rather than the individual. In the U.S., almost one-third of eligible voters are not registered, and then, as I mentioned, even among registered voters a good number are turned away from the polls because voter lists are not accurate. Approximately four million eligible voters could not vote in 2008 because of registration problems. Some were wrongly purged from the voter rolls, others were omitted from lists because of data entry errors, and some were disenfranchised because lists were out of date or did not include all those who registered just before the deadline.

Now by law, under the Help America Vote Act, all states are already required to maintain state-wide lists of registered voters. But Australia, like Canada and other nations, expand these lists to include all who are eligible to vote by sharing data with motor vehicles, public assistance, naturalization and other agencies. The government is then responsible for including eligible voters and keeping voter rolls current by sending new voters, such as new citizens, 18-year-olds, and those who have moved, registration materials with pre-paid postage for easy return. Here in Australia, this system is advanced through federal standards and support. Not only does this ensure that more people exercise their



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responsibility to vote, but it reduces the anger and frustration I saw in places like San Antonio by individuals who are wrongly denied their right to vote.

Fourth, states in the U.S. all offer different ballot forms. It's been almost ten years to the day since the 2000 election, which introduced us to phrases like butterfly ballot or hanging chad. And yet jurisdictions in the U.S. still routinely use a hodgepodge of ballots, many of which still are not clear and easy to use. If people think they are voting for one thing and effectively have their vote count for something else, that is effectively disenfranchising them. Voting experts believe this affects hundreds of thousands of voters in the U.S..

By contrast, Australia and other democracies have standard ballots that are simple and easy to use. The mere fact that they are tested and used over and over again, itself reduces confusion. The U.S. Election Assistance Commission and various scholars and groups have studied Australian and other ballots and developed guidelines for good ballot design. The whole point is to eliminate risk of systematic voting errors. As a standard-bearer for democracy, it undermines confidence in U.S. elections around the world when stories appear that votes are regularly tossed out because a state or county election administrator presented voters with a poorly designed ballot.

Finally, contrary to popular belief, election day is not fixed by the Constitution. Article 1, Clause 4, says that Congress shall select the date for the national elections. In Australia, election day is on a Saturday. It is not unusual for friends to go vote together and then gather for a barbeque or a party. American elections are held on a Tuesday, a work day. This may well reduce voter turnout, and at the very least it reduces opportunities to come together as citizens to celebrate this right. Congress may want to consider whether setting elections for a weekend or holiday would increase both turn-out and civic pride. Which leads me to my last point.

The truly inspired element of the constitutional system of democratic government that America pioneered is its adaptability - our striving to always live up to our highest ideals as we seek to create a more perfect Union. Our founding fathers knew they had a great idea, a revolutionary idea. But just as importantly, they also knew they did not have a monopoly on all the great ideas, and so they created a system flexible enough to adopt things like the secret ballot.

I don't suggest that the U.S. should adopt the Australian system or these elements. Some of them are controversial even here. But my point is this. Our nation is committed to the principle of being a government of the people, by the people and for the people. The people have the power and the duty to choose their representatives. When it comes to ensuring that all voters can be heard and that all of their votes are counted fairly, we



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cannot stop striving for a more perfect union. We have learned lessons from Australia in the past, and we may still be able to learn more things today.

Thank you.